MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the Parent-Child relationship of:

A.B., B.B., D.B., F.B., J.B. (Minor Children),

and

C.B. (Mother)

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

December 13, 2022

Court of Appeals Case No. 22A-JT-1357

Appeal from the Madison Circuit Court

The Honorable Stephen J. Koester, Judge

Trial Court Cause No.
48C02-2105-JT-95
48C02-2105-JT-96
48C02-2105-JT-97
48C02-2105-JT-98
48C02-2105-JT-99

Mathias, Judge.

[1] C.B. ("Mother") appeals the Madison Circuit Court's order terminating her parental rights to her five children. Mother raises two issues:

> I. Whether the trial court abused its discretion when it admitted hearsay statements into evidence; and,
>
> II. Whether clear and convincing evidence supports the trial court's termination of Mother's parental rights.

[2] We affirm.

Facts and Procedural History

[3] Mother had five children with B.B. ("Father"):[1] A.B. born in March 2006, Br.B. born in July 2007, F.B. born in September 2009, D.B. born in August 2011, and J.B. born in April 2013. DCS removed the children from Mother's care in August 2019 because Mother was in jail, the children lacked an appropriate caregiver, and their house was not maintained in a safe condition.[2]

[4] In September 2019, the Department of Child Services ("DCS") filed a petition alleging that the children were Children In Need of Services. That same month, Mother was charged with operating a vehicle with greater than .15 grams per 100 milliliters of blood (or per 210 liters of breath) Alcohol Concentration

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[1] Father, who resides in Canada, did not participate in these proceedings.

[2] For approximately nine months before the children were removed from Mother's care, DCS was involved with the family through an informal adjustment due to Mother's inability to maintain a suitable home, stable employment, and provide appropriate caregivers for the children.

Equivalent ("ACE") in her blood.[3] Mother was later convicted of that offense. Mother admitted that the children were CHINS, and the trial court issued its order adjudicating the children as CHINS in November 2019.

[5] Mother was ordered to serve one year for her operating a vehicle with greater than .15 ACE conviction, with two days executed and the remainder suspended to probation. She was also ordered to complete an alcohol abuse program. The State later filed a petition to revoke her probation for failure to pay fees and costs. The petition was still pending when the fact-finding hearing was held in this case.

[6] Mother's participation in services throughout the CHINS proceedings was inconsistent. Mother completed a substance abuse evaluation in 2019 but failed to complete the recommended treatment. Mother also received a referral for a mental health assessment in 2021 but did not complete the assessment. Mother failed to complete referrals for home-based casework, individual therapy, and domestic violence support.

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[3] "A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) of the person's breath;

commits a Class A misdemeanor." Ind. Code 9-30-5-1.

"Alcohol concentration equivalent" is defined as "the alcohol concentration in a person's blood or breath determined from a test of a sample of the person's blood or breath." See Ind. Code 9-13-2-2.4.

[7] Mother participated in family and home-based counseling, but her parenting skills did not improve. Mother attended several child and family team meetings throughout the proceedings but often made promises in those meetings that remain unfulfilled. Mother also refused to sign consents for the children's medical needs to be addressed.

[8] Mother was unable to provide safe, stable, and appropriate housing for her children. She repeatedly failed to keep DCS informed of her address. In 2020, she left Indiana and began living in Kentucky. Mother refused to disclose her address in Kentucky to DCS. When Mother returned to Indiana, she lived in a home that lacked plumbing. Mother also lacks a source of income sufficient to support herself and her children.

[9] The CHINS proceedings pended for almost two years, and Mother failed to make any substantial progress toward reunification during the proceedings. Mother's visitation with the children ceased in May 2021 after she missed several visits allegedly due to illness but failed to provide verification of her claimed illness. Mother also smelled of alcohol when she arrived for a visit in April or May of 2021, and her speech was incoherent. Mother has not seen the children in person since May 2021.

[10] Mother has admitted that she has substance abuse issues, particularly with alcohol and marijuana. She also told the family case manager that she has suffered from sexual and physical abuse. The children have also suffered significant trauma as a result of the lack of permanency in their lives.

[11] On May 26, 2021, DCS filed a petition to terminate Mother's parental rights to her five children. The fact-finding hearing commenced on August 3, 2021. The testimony presented addressed primarily whether Father had been served with notice of the proceedings and why DCS initiated the CHINS proceedings. The court resumed the fact-finding hearing on April 19, 2022. Mother failed to appear for the hearing, but she was represented by counsel.

[12] At the hearing, the family case manager testified that Mother's parental rights should be terminated because Mother had not shown "substantial progress in her situation to be able to care for any of the children" during the nearly three years since they were removed from Mother's care. Tr. p. 49. The CASA agreed that Mother did participate in services but had not "made any significant gains in her ability to parent." Tr. p. 76. The CASA testified that the children are suffering from trauma caused by the lack of permanency in their lives and that they "desperately need permanency." Tr. pp. 74, 77. She also testified that terminating Mother's parental rights was in the children's best interests. Tr. p. 75.

[13] On May 12, 2022, the trial court issued its order terminating Mother's parental rights after concluding that DCS met its burden of proving the statutory elements enumerated in Indiana Code section 31-35-2-4. Mother now appeals.

Hearsay Evidence

[14] First, Mother claims that the trial court erred when it admitted hearsay statements into evidence over her objection. Specifically, Mother argues that the

trial court abused its discretion when it admitted the CHINS petitions into evidence and the family case manager's testimony concerning Mother's compliance with services.

[15] The admission of the evidence is entrusted to the discretion of the trial court. *D.B.M. v. Ind. Dept. of Child Servs.*, 20 N.E.3d 174, 179 (Ind. Ct. App. 2014). Evidentiary rulings of a trial court are afforded great deference on appeal and are overturned only upon a showing of an abuse of discretion. *In re Des.B*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014). We will reverse the trial court's decision regarding admission of evidence only when the decision is against the logic and effect of the facts and circumstances before the court. *Matter of L.T.*, 145 N.E.3d 864, 868 (Ind. Ct. App. 2020). It is well-established that errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. *Des.B*, 2 N.E.3d at 834.

[16] Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. *In re K.R., et al.*, 154 N.E.3d 818, 820 (Ind. 2020) (citing Ind. Evidence Rule 801(c)). Hearsay evidence is generally inadmissible unless it falls under a recognized exception. Evid. R. 802. These exceptions are enumerated by Indiana Rule of Evidence 803. Statements not admitted to prove the truth of the matter asserted do not run afoul of the hearsay rule—they are not hearsay. Evid. R. 802.

[17] At the fact-finding hearing, DCS offered into evidence several exhibits from the CHINS proceedings. Mother objected to Exhibits Two, Four, Six, Eight, and

Ten because they were "riddle[d]" with hearsay statements. Tr. p. 33. Those exhibits are the petitions for each of the five children alleging that each child was a CHINS. The court admitted the exhibits over objection but stated that "the Court is not . . . using the . . . hearsay evidence contained within those petitions. Those petitions are being entered only to relate back to the orders that are clearly relevant throughout the underlying" CHINS proceedings. Tr. p. 34.

[18] "In bench trials, it is generally presumed that the trial judge disregards inadmissible evidence and renders its decision solely on the basis of relative and probative evidence." *In re A.J.*, 877 N.E.2d 805, 814 (Ind. Ct. App. 2007), *trans. denied*. Moreover, evidence of a parent's prior involvement with the Department of Child Services, including the filing of previous CHINS petitions and previous termination proceedings, is admissible as proper character evidence and helpful in demonstrating negative habitual patterns of conduct to determine parental fitness and the best interests of the children. *A.F. v. Marion Cnty. Off. of Fam. & Child.*, 762 N.E.2d 1244, 1252 (Ind. Ct. App. 2002); *see also Carter v. Knox Cnty. Off. of Fam. & Child.*, 761 N.E.2d 431, 437 (Ind. Ct. App. 2001) (stating that DCS is "entitled to offer into evidence 'the CHINS petition, the predispositional report, the parental participation order, the modification report or any other document or order containing written findings, which was required to be created during the proceedings").

[19] Mother did not object to any specific hearsay statements at trial and does not direct us to any specific statements in the CHINS petitions that she believes were inadmissible hearsay. Moreover, the CHINS petitions were

unquestionably relevant to the termination proceedings as the petitions establish the reasons the children were removed from Mother's care. Mother also admitted that the children were CHINS because she lacked suitable housing and had pending criminal charges.[4] *See e.g.* Ex. Vol. p. 67. And at the August 3, 2021, fact-finding hearing, the family case manager testified concerning the reasons the children were adjudicated CHINS, and Mother did not object to that testimony. Tr. pp. 18-19.

[20] For all of these reasons, we conclude that any error in the admission of the CHINS petitions was harmless as Mother has not established that their admission affected her substantial rights.

[21] Mother also argues that the trial court abused its discretion when it admitted the family case manager's testimony concerning her completion of services and failure to attend visitation with her children. Appellant's Br. at 11-12. Specifically, Mother challenged the family case manager's testimony that Mother did not complete substance abuse treatment, that she did not submit to

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[4] Additionally, Mother argues that the CHINS petitions should not have been admitted because hearsay evidence is not allowed in CHINS proceedings and those proceedings are adjudicated under the preponderance of the evidence standard of proof. *See In re K.D.*, 962 N.E.2d 1249, 1259 (Ind. 2012) (noting that dispositional reports may include evidence of probative value even if the report would be otherwise excluded); *In re N.E.,* 919 N.E.2d 102, 105 (Ind. 2010) (noting that CHINS cases are decided under the preponderance of the evidence standard). However, the trial court was required to consider the CHINS proceedings to determine whether the conditions that led to the children's removal from Mother's care would likely be remedied. *See* I.C. 31-35-2-4(b)(2). Moreover, Mother admitted that the children were CHINS. And the trial court applied the correct clear and convincing standard of proof in its consideration of whether Mother's parental rights should be terminated. The trial court's judgment terminating Mother's parental rights focused on Mother's failure to benefit from DCS-provided services and not on any hearsay statements contained in the CHINS petitions.

each of the requested drug screens, and that her visitation with the children was stopped because she missed several visitations and was intoxicated at one visit. Tr. pp. 38-39, 44-46.

[22] Assuming for the sake of argument that this testimony constitutes inadmissible hearsay, the testimony was cumulative of other evidence admitted at the fact-finding hearing. The orders on the periodic case reviews note Mother's failure to complete substance abuse treatment and her continued admissions that she uses marijuana and consumes alcohol. The CASA testified that she observed Mother's state of intoxication during a family team meeting. And the trial court's June 2021 order suspending Mother's visitation with the children was admitted as an exhibit. Although the reasons that Mother's visitation was suspended are not listed in the court's order, the record establishes that Mother missed visits claiming illness, but DCS was unable to verify her reasons for missing the visits. Tr. pp. 53-56.

[23] Because the challenged testimony is cumulative of other evidence admitted at the fact-finding hearing, any error the trial court made when it admitted the testimony was harmless. *See In re Des.B.*, 2 N.E.3d at 835 (concluding that any error in admitting telephonic testimony harmless when testimony was cumulative of other evidence).

[24] For all of these reasons, Mother has not established any reversible error concerning the admission of evidence at the fact-finding hearing.

Clear and Convincing Evidence

[25] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). In analyzing the trial court's decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.*

[26] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court's findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court's termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. Finally, we will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

[27] It is well-settled that the parent-child relationship is one of society's most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App.

2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. Ind. Code § 31-35-2-4(b)(2) (2021). Only two of those elements are at issue in this case: (1) whether there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside Mother's home will not be remedied, and 2) whether termination of Mother's parental rights was in the child's best interests.[5] I.C. § 31-35-2-4(b)(2)(B)(i) & (C).

[28] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child's very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

[29] Mother argues that DCS failed to prove that there is a reasonable probability that the conditions that resulted in the children's removal and continued placement outside of her home will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014).

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[5] DCS must only prove one of the elements listed in Indiana Code subsection 31-35-2-4(b)(2)(B). For this reason, we do not address Mother's argument under the "threat" prong enumerated in subsection 31-35-2-4(b)(2)(B)(ii).

In the second step, the juvenile court judges a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the juvenile court may also consider the reasons for the child's continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[30] The children were removed from Mother's care because she had a pending criminal charge and lacked adequate, safe housing for the children. The children were also left in the care of individuals who were unfit to care for their needs. Tr. p. 19. In her brief, Mother concedes that she did not complete all the services offered by DCS and that she uses marijuana and drinks alcohol. But she claims that these circumstances alone are insufficient to support the termination of her parental rights. *See* Appellant's Br. at 15-17.

[31] Mother was arrested for and charged with operating a vehicle with greater than .15 ACE. Mother continued to abuse alcohol throughout these proceedings. For example, Mother smelled like alcohol and could not speak coherently when she arrived for visitation with the children in Spring 2021. On a separate date, Mother was intoxicated when she was scheduled to have a meeting with the CASA and family case manager in Spring 2021. Mother's alcohol consumption, continued use of marijuana, and her failure to complete substance abuse treatment all significantly impact her ability to care for her children.

[32] Further, throughout the CHINS and termination proceedings, Mother lacked stable, safe housing. She often failed to inform DCS of her address and, when DCS had her correct address, Mother refused to allow service providers into her home. Mother had a home in Spring 2021, but the home did not have plumbing. Mother also moved to Kentucky for several months during the CHINS proceedings. On the date of the fact-finding hearing, DCS did not know where Mother was living. Tr. p. 27. Mother also lacked a stable income throughout these proceedings.

[33] In the nearly three years from the date the children were removed from Mother's care, Mother has not shown that she has improved her ability to parent her children or that she is able to be a fit parent. While she did participate in services, Mother failed to benefit from those services. Mother cannot provide a safe, stable home for her children. Her failure to appear for the fact-finding hearing is further evidence demonstrating that Mother was not committed to reunifying with her children.

[34] For all of these reasons, we agree with the trial court that DCS presented clear and convincing evidence that there is a reasonable probability that the reasons for the children's removal or the reasons for continued placement outside Mother's home will not be remedied. *See, e.g.*, *R.W. v. Marion Cnty. Dep't of Child Servs.*, 892 N.E.2d 239, 249 (Ind. Ct. App. 2008) ("[W]here there are only temporary improvements, and the pattern of conduct shows no overall progress, the court might reasonably infer that under the circumstances, the problematic situation will not improve."); *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861

N.E.2d 366, 372 (Ind. Ct. App. 2007) ("A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.") (citation omitted), *trans. denied*.

[35] Therefore, we turn to Mother's argument that termination of her parental rights was not in the children's best interest. A court's consideration of whether termination of parental rights is in a child's best interests is "[p]erhaps the most difficult determination" a trial court must make in a termination proceeding. *E.M.*, 4 N.E.3d at 647. When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child's need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, "children cannot wait indefinitely for their parents to work toward preservation or reunification." *E.M.*, 4 N.E.3d at 648.

[36] Mother claims that the "children suffered no injuries before they were removed." Appellant's Br. at 16. We agree that there was no evidence that the children suffered any physical harm, but DCS presented evidence that the children suffered mental and emotional harm as a result of Mother's neglect. The CASA testified that the children are suffering from trauma caused by the

lack of permanency in their lives and they "desperately need permanency." Tr. pp. 74, 77.

[37] Moreover, we observe that testimony from both the case manager and CASA combined with evidence that there is a reasonable probability that the reasons for a child's removal will not likely be remedied has regularly been used to support a juvenile court's determination that termination is in a child's best interest. *See A.D.S.*, 987 N.E.2d at 1158-59. Here, the DCS case manager testified that Mother's parental rights should be terminated. Likewise, the CASA believed that termination of Mother's parental rights was in the children's best interests. Tr. pp. 49, 75.

[38] For these reasons, we agree with the trial court that DCS presented clear and convincing evidence that termination of Mother's parental rights is in the children's best interests.

Conclusion

[39] Mother has not established any reversible evidentiary error. And clear and convincing evidence supports the trial court's order terminating Mother's parental rights to her children. We therefore affirm the trial court's judgment.

[40] Affirmed.

Robb, J., and Foley, J., concur.